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SENATE BILL 1238

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING CERTAIN SECTIONS OF THE
NMSA 1978 TO MODIFY THE AIR QUALITY CONTROL ACT; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-2 NMSA 1978 (being Laws 1967,
Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS. -- As used in the Air Quality Control
Act:

A. "air contaminant" means any substance, including
but not limited to any particulate matter; fly ash; dust; fumes;
gas; mist; smoke; vapor; microorganisms; radioactive material,
including source material, special nuclear material and
byproduct material, as defined by the federal Atomic Energy Act
of 1954, as amended; or any combination [thereof] or any decay

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1 or reaction product thereof that is emitted or otherwise enters
2 the ambient air;

3 B. "air pollution" means the emission, except
4 emission that occurs in nature, into the [~~outdoor atmosphere~~]
5 ambient air of one or more air contaminants in quantities and of
6 a duration that may with reasonable probability injure human
7 health or animal or plant life or as may unreasonably interfere
8 with the public welfare, visibility or the reasonable use of
9 property;

10 C. "department" means the department of environment;

11 D. "director" means the administrative head of a
12 local agency;

13 E. "emission limitation" [~~and~~] or "emission
14 standard" [~~mean~~] means a requirement established by the
15 environmental improvement board or the local board, the
16 department, the local authority or the local agency or pursuant
17 to the federal act that limits the quantity, rate or
18 concentration, or combination thereof, of emissions of air
19 contaminants on a continuous basis, including any requirements
20 relating to the operation or maintenance of a source to assure
21 continuous reduction and any design, equipment, work practice or
22 operational standard promulgated pursuant to the Air Quality
23 Control Act or the federal act;

24 F. "federal act" means the federal Clean Air Act,
25 Sections 42 U.S.C. Sections 7401, et seq., its subsequent

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1 amendments and successor provisions;

2 G. "federal standard of performance" means any
3 standard of performance, emission limitation or emission
4 standard adopted pursuant to [~~42 USC Section 7411 or 7412~~]
5 Section 111 or 112 of the federal act;

6 H. "hazardous air pollutant" means an air
7 contaminant that has been [~~classified~~] listed as a hazardous air
8 pollutant pursuant to Section 112(b) of the federal act;

9 I. "local agency" means the administrative agency
10 established by a local authority pursuant to Paragraph (2) of
11 Subsection A of Section 74-2-4 NMSA 1978;

12 J. "local authority" means any of the following
13 political subdivisions of the state that have, by following the
14 procedure set forth in Subsection A of Section 74-2-4 NMSA 1978,
15 assumed jurisdiction for local administration and enforcement of
16 the Air Quality Control Act:

17 (1) a county that was a class A county as of
18 January 1, 1980; or

19 (2) a municipality with a population greater
20 than one hundred thousand located within a county that was a
21 class A county as of January 1, 1980;

22 K. "local board" means a municipal, county or joint
23 air quality control board created by any local authority;

24 L. "mandatory class I area" means any of the
25 following areas in this state that were in existence on August

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1 7, 1977:

2 (1) national wilderness areas that exceed five
3 thousand acres in size; and

4 (2) national parks that exceed six thousand
5 acres in size;

6 M "modification" means any physical change in, or
7 change in the method of operation of, a source that [~~results in~~
8 ~~an increase in the potential emission rate~~] increases or
9 potentially increases the amount of any regulated air
10 contaminant emitted by the source or that results in the
11 emission of any regulated air contaminant not previously
12 emitted, but does not include:

- 13 (1) a change in ownership of the source;
14 (2) routine maintenance, repair or replacement;
15 (3) for changes not subject to regulations to
16 prevent significant deterioration of air quality or to achieve
17 national ambient air quality standards in nonattainment areas:

18 [~~(3)~~] (a) installation of air pollution
19 control equipment, and all related process equipment and
20 materials necessary for its operation, undertaken for the
21 purpose of complying with regulations adopted by the
22 environmental improvement board or the local board or pursuant
23 to the federal act, or with permits issued by the department or
24 the local authority under the Air Quality Control Act; or

25 (b) a change that increases the amount of

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1 any regulated air contaminant, the ambient concentration of
2 which is regulated pursuant to the Air Quality Control Act or
3 the federal act, emitted by the source by less than a de minimis
4 amount established by regulation of the environmental
5 improvement board or local board; or

6 (4) unless previously limited by enforceable
7 permit conditions:

8 (a) an increase in the production rate,
9 if such increase does not exceed the operating design capacity
10 of the source;

11 (b) an increase in the hours of
12 operation; or

13 (c) use of an alternative fuel or raw
14 material if, prior to January 6, 1975, the source was capable of
15 accommodating such fuel or raw material or if use of an
16 alternate fuel or raw material is caused by any natural gas
17 curtailment or emergency allocation or any other lack of supply
18 of natural gas;

19 N. "nonattainment area" means for any air
20 contaminant an area that is designated "nonattainment" with
21 respect to that contaminant within the meaning of Section 107(d)
22 of the federal act;

23 O. "person" includes an individual, partnership,
24 corporation, association, the state or political subdivision of
25 the state and any agency, department or instrumentality of the

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1 United States and any of their officers, agents or employees;

2 [P.] ~~"potential emission rate" means the emission~~
3 ~~rate of a source at its maximum capacity in the absence of air~~
4 ~~pollution control equipment that is not vital to production of~~
5 ~~the normal product of the source or to its normal operation;~~

6 Q.] P. "regulated air contaminant" means any air
7 contaminant, the emission or ambient concentration of which is
8 regulated pursuant to the Air Quality Control Act or the federal
9 act;

10 [R.] Q. "secretary" means the secretary of
11 environment;

12 [S.] R. "significant deterioration" means any
13 increase in the ambient concentrations of any air contaminant
14 above the levels allowed by the federal act or federal
15 regulations for that air contaminant in the area within which
16 the increase occurs;

17 [T.] S. "source" means any structure, building,
18 equipment, facility, installation or operation that emits or may
19 emit any air contaminant;

20 [U.] T. "standard of performance" means a
21 requirement of continuous emission reduction, including any
22 requirement relating to operation or maintenance of a source to
23 assure continuous emission reduction;

24 [V.] U. "state implementation plan" means any plan
25 submitted by New Mexico to the federal environmental protection

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1 agency pursuant to [~~42 U.S.C. Section 7410~~] Section 110 of the
2 federal act; and

3 [W.] V. "toxic air pollutant" means any air
4 contaminant, except a hazardous air pollutant, classified by the
5 environmental improvement board or the local board as a toxic
6 air pollutant."

7 Section 2. Section 74-2-7 NMSA 1978 (being Laws 1972,
8 Chapter 51, Section 4, as amended) is amended to read:

9 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
10 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

11 A. By regulation, the environmental improvement
12 board or the local board shall require:

13 (1) any person intending to construct or modify
14 any source, except as otherwise specifically provided by
15 regulation, to obtain a construction permit from the department
16 or the local agency prior to such construction or modification;
17 and

18 (2) any person intending to operate any source
19 for which an operating permit is required by [~~the 1990~~
20 ~~amendments to~~] Section 502 of the federal act [~~except as~~
21 ~~otherwise specifically provided by regulation~~] to obtain an
22 operating permit from the department or the local agency.

23 B. Regulations adopted by the environmental
24 improvement board or the local board shall include at least the
25 following provisions:

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1 (1) requirements for the form and content of
2 permit applications, including the submission of relevant
3 information [~~including but not limited to information~~] the
4 department or the local agency deems necessary to [ensure]
5 determine that regulations and standards under the Air Quality
6 Control Act or the federal act will not be violated;

7 (2) specification of the deadlines for
8 processing permit applications; provided, the deadline for a
9 final decision by the department or the local agency on a
10 construction permit application may not exceed:

11 (a) one hundred eighty days after the
12 application is determined to be complete, if the application is
13 not [~~affected by requirements for prevention of~~] subject to
14 regulations to prevent significant deterioration of air quality;
15 or

16 (b) two hundred forty days after the
17 application is determined to be complete, if the application is
18 [~~affected by requirements for prevention of~~] subject to
19 regulations to prevent significant deterioration of air quality;

20 (3) specification of the public notice, comment
21 period and public hearing, if any, required prior to the
22 issuance of a permit; provided the permit regulations adopted:

23 (a) by the environmental improvement
24 board shall include provisions governing notice to nearby
25 states; and

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1 (b) by any local board shall include
2 provisions requiring that notice be given to the department of
3 all permit applications [~~by any source that emits, or has a~~
4 ~~potential emission rate of, one hundred tons per year or more of~~
5 ~~any regulated air contaminant~~] subject to regulations to prevent
6 significant deterioration of air quality or to achieve national
7 ambient air quality standards in nonattainment areas, including
8 any source of fugitive emissions of each regulated air
9 contaminant, at least sixty days prior to the date on which
10 construction or ~~major modification~~ is to commence;

11 (4) a schedule of construction permit fees
12 sufficient to cover:

13 (a) the reasonable costs of reviewing and
14 acting upon any application for such permit; and

15 (b) the reasonable costs of implementing
16 and enforcing the terms and conditions of the permit, excluding
17 any court costs or other costs associated with an enforcement
18 action;

19 (5) a schedule of emission fees consistent with
20 the provisions of Section 502(b) (3) of [~~the 1990 amendments to~~
21 the federal act;

22 (6) specification of the maximum length of time
23 for which a permit shall be valid; provided that for an
24 operating permit, such period may not exceed five years; and

25 (7) for an operating permit only;

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1 (a) provisions consistent with Sections
2 502(b) and 505(b) of the federal act providing: 1) notice to
3 and review and comment by the United States environmental
4 protection agency; and 2) that if the department or local agency
5 receives notice of objection from the United States
6 environmental protection agency before the operating permit is
7 issued, the department or the local agency shall not issue the
8 permit unless it is revised and issued under Section 505(c) of
9 the federal act;

10 (b) provisions governing renewal of the
11 operating permit; and

12 (c) specification of the conditions under
13 which the operating permit may be terminated, modified or
14 revoked and reissued prior to the expiration of the term of the
15 operating permit.

16 C. The department or the local agency may deny any
17 application for:

18 (1) a construction permit if it appears that
19 the source, after construction or modification:

20 (a) will not meet applicable
21 ~~[requirements of]~~ regulations adopted pursuant to the Air
22 Quality Control Act; [the federal act or any regulation adopted
23 pursuant to either; or

24 ~~(2) an operating permit if:~~

25 ~~(a) the source for which the permit is~~

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1 ~~sought]~~

2 (b) will emit [~~a hazardous air pollutant~~
3 ~~or~~] any air contaminant in excess of a federal standard of
4 performance or a regulation of the environmental improvement
5 board or the local board;

6 [~~(b) it appears that the source for which~~
7 ~~the permit is sought]~~ (c) will cause or contribute to air
8 contaminant levels in excess of any national or state ambient
9 air quality standard or, within the boundaries of a local
10 authority, applicable local ambient air quality standards; or

11 [~~(e)~~] (d) will violate any other
12 provision of the Air Quality Control Act or the federal act
13 [~~will be violated~~]; and

14 (2) an operating permit if the source will not
15 meet each applicable standard, regulation or requirement under
16 the Air Quality Control Act or the federal act.

17 D. The department or the local agency may specify
18 reasonable terms and conditions to any permit granted under this
19 section [~~including~~] as follows:

20 (1) for a construction permit such terms and
21 conditions may include:

22 (a) a requirement that such source
23 install and operate control technology, determined on a case-by-
24 case basis, sufficient to meet the requirements of the Air
25 Quality Control Act, the federal act and regulations promulgated

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1 pursuant to either; ~~[and~~

2 ~~(2) for an operating permit:~~

3 ~~(a)]~~ (b) imposition of individual
4 emission limits, determined on a case-by-case basis, but only as
5 restrictive as necessary to ~~[meet the]~~ ensure compliance with
6 applicable standards, regulations or requirements [of] under the
7 Air Quality Control Act and the federal act [or the emission
8 rate specified in the operating permit application, whichever is
9 more stringent];

10 (c) at the request of the applicant,
11 imposition of practicably enforceable limitations, including
12 facility-wide emission limitations, that are no less stringent
13 than necessary to ensure compliance with applicable standards,
14 regulations or requirements under the Air Quality Control Act
15 and the federal act, or are established to limit the amount of a
16 regulated air contaminant that a source has the potential to
17 emit;

18 ~~[(b)]~~ (d) compliance with applicable
19 federal standards of performance;

20 ~~[(e)]~~ (e) imposition of reasonable
21 restrictions and limitations not relating to emission limits or
22 emission rates; or

23 ~~[(d)]~~ (f) any combination of the terms
24 and conditions listed above.

25 For a modification, the terms and conditions shall apply

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1 only to the emission unit or units being modified; and
2 (2) for an operating permit, such terms and
3 conditions shall be sufficient to ensure compliance with each
4 applicable standard, regulation or requirement under the Air
5 Quality Control Act or the federal act, including any pertinent
6 term or condition in a construction permit issued pursuant to
7 this section.

8 E. This section does not authorize the department or
9 the local agency to require the use of machinery, devices or
10 equipment from a particular manufacturer if the federal
11 standards of performance, state regulations and permit
12 conditions may be met by machinery, devices or equipment
13 otherwise available.

14 F. The issuance of a permit does not relieve any
15 person from the responsibility of complying with the provisions
16 of the Air Quality Control Act and any applicable regulations of
17 the environmental improvement board or the local board. Any
18 conditions placed upon a permit by the department or the local
19 agency shall be enforceable to the same extent as a regulation
20 of its board.

21 G. Any person who participated in a permitting
22 action before the department or the local agency shall be
23 notified by the department or the local agency of the action
24 taken and the reasons for the action. Notification of the
25 applicant shall be by certified mail.

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1 H. Any person who participated in a permitting
2 action before the department or the local agency and who is
3 adversely affected by such permitting action may file a petition
4 for hearing before the environmental improvement board or the
5 local board. The petition shall be made in writing to the
6 environmental improvement board or the local board within thirty
7 days from the date notice is given of the department's or the
8 local agency's action. The petition shall specify the portions
9 of the permitting action to which the petitioner objects,
10 generally state the objections, certify that a copy of the
11 petition has been served in accordance with this subsection and
12 have attached a copy of the permitting action for which a
13 hearing is sought. If the petitioner is not the applicant or
14 permittee, the petitioner shall serve a copy of the petition on
15 the applicant or permittee. Unless a timely [request] petition
16 for hearing is made, the decision of the department or the local
17 agency shall be final.

18 I. If a timely petition for hearing is made, the
19 environmental improvement board or the local board shall hold a
20 hearing within ninety days after receipt of the petition. The
21 environmental improvement board or the local board shall notify
22 the petitioner and the applicant or permittee, if other than the
23 petitioner, by certified mail of the date, time and place of the
24 hearing. If the subject of the petition is a permitting action
25 deemed by the environmental improvement board or the local board

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1 to substantially affect the public interest, the environmental
2 improvement board or the local board shall ensure that the
3 public receives notice of the date, time and place of the
4 hearing. The public in such circumstances shall also be given a
5 reasonable opportunity to submit data, views or arguments orally
6 or in writing and to examine witnesses testifying at the
7 hearing. Any person submitting data, views or arguments orally
8 or in writing shall be subject to examination at the hearing.

9 J. The environmental improvement board or the local
10 board may designate a hearing officer to take evidence in the
11 hearing. All hearings shall be recorded.

12 K. The burden of proof shall be upon the petitioner.
13 Based upon the evidence presented at the hearing, the
14 environmental improvement board or the local board shall
15 sustain, modify or reverse the action of the department or the
16 local agency respectively.

17 L. Notwithstanding any other provision of law and
18 subject to the provisions of Section 74-2-4 NMSA 1978, a final
19 decision on a permit by the department, the environmental
20 improvement board, the local agency, the local board or the
21 court of appeals that a new source will or will not meet
22 applicable local, state and federal air pollution standards and
23 regulations shall be conclusive and is binding on every other
24 state agency and as an issue before any other state agency shall
25 be deemed resolved in accordance with that final decision.

